

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3764 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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VAGHARI NANAKUBHAI SHAKARABHAI

Versus

DISTRICT MAGISTRATE

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Appearance:

MS DR KACHHAVAH for Petitioner

Mr. Nigam Shukla, lerned Addl.P.P. for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 14/10/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the order dated 20-4-96 passed by the District Magistrate, Gandhinagar detaining the petitioner under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the

Act'). The detention order was executed on the same day i.e. 20-4-96 and since then the petitioner is under detention lodged at Junagadh District Jail, Junagadh.

2. The present Special Civil Application was filed on 20-5-96 and on 21-5-96 Rule returnable on 8-7-96 was issued. So far neither any reply has been filed on behalf of the respondent nor any affidavit-in-rely has been filed by the detaining authority.

3. The grounds of detention enclosed with the detention order show that the detaining authority has taken into consideration the pendency of 22 criminal cases against the petitioner under the provisions of Bombay Prohibition Act and after noticing the pendency of these 22 criminal cases under the Bombay Prohibition Act during the years 1992 and 1996 and after noticing the allegations of these criminal cases, the detaining authority has also referred to the statements of four witnesses in which the petitioner's bootlegging and anti social activities have been stated by the witnesses with the request that their identity be kept secret. The detaining authority has found that the petitioner was a bootlegger, was a head strong person and was engaged in the business of unauthorised sale of the liquor and in order to prevent the petitioner from continuing his anti social activities no alternative was left but to detain him and accordingly the detention order was passed.

4. The detention order is challenged on several grounds but the learned counsel for the petitioner has invited the attention of this court to Para 16 of the petition wherein it has been stated that the statements of the witnesses were recorded against the petitioner on 29-1-95 and the detention order was passed on 20-4-96 and thus there is a delay of over 15 months in passing the detention order after the date on which the statements against the petitioner were recorded. The learned Addl.G.P. for the respondents is not in a position to state the date on which the statements were verified by the detaining authority and no explanation whatsoever has been given for this delay of 15 months in passing the detention order after recording the statements of the witnesses. In this view of the matter, the detention order deserves to be quashed and set aside on the ground of 15 months delay in passing the detention order.

5. Accordingly this Special Civil Application is allowed. The impugned detention order dated 20-4-96 passed by District Magistrate, Gandhinagar is hereby quashed and set aside and the petitioner's continued

detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

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